



DOCKET NO: 212731US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

HISAKI SUMIMURA, ET AL. :

EXAMINER: FIORILLA, C.

SERIAL NO: 09/914,251 :

FILED: AUGUST 24, 2001 :

GROUP ART UNIT: 1731

FOR: AQUEOUS CARBON-
CONTAINING UNSHAPED
REFRACTORIES :

RESPONSE TO RESTRICTION REQUIREMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In Response to the Official Action dated October 2, 2003, Applicants provisionally elect, with traverse, the species of refractory having carbon black with specific surface area. Claims 3-6 read on the elected species.

REMARKS

Applicants have provisionally elected, for search and examination purposes only, the following species;

Species b: refractory having carbon black with specific surface area.

The Examiner has required election of a single species from the two species of a) refractory having carbon black with pH 7-9 or b) refractory having carbon black with specific surface area. However, the Examiner has provided no support for the assertion that these are patentably distinct species. There is no reason given as to why these are seen as patentably

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Reply to Office Action of October 2, 2003

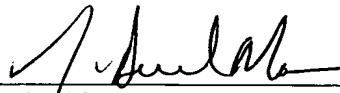
distinct. MPEP 803 requires that the Examiner provide support for any conclusion of patentable distinctness. In this case, none has been put forth, not even an indication of different classifications required for search. As such, the Office has not satisfied its burden of showing patentable distinctness between the species and the requirement is therefore improper and should be withdrawn.

With respect to the elected species, Applicants respectfully submit that should the elected species be found allowable, the Office should expand its search to the non-elected species.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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